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Date: 11-13-00

To: Matthew Cohn

From: **Jim Freeman, Trial Attorney**
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U.S. Department of Justice

Environment and Natural Resources Division

JMG:JDF
90-11-2-07106

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November 13, 2000

BY FACSIMILE

John D. McCarthy, Esq.
Holme Roberts & Owen LLP
1700 Lincoln Street
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Denver, Colorado 80203-4541

**Re: United States v. W.R. Grace & Co., et al.;
Civil Action No. 00-167-M-DWM**

Dear Jay:

This is in response to the letter Kathryn J. Coggon sent to Paul Peronard and Matthew Cohn on November 10, 2000 regarding W.R. Grace's intent to conduct a removal action at properties owned by Grace's subsidiary Kootenai Development Company (KDC) that are a subject of our Motion in Aid of Immediate Access that is currently pending in Montana District Court. Ms. Coggon's letter describes this property as the Kootenai Flyway and Kootenai Bluffs properties.

Ms. Coggon's letter asserts that Paul Peronard, in a conversation with Grace employee Jim Stout, "agreed that Grace will conduct the removal action at the Kootenai Flyway and the Kootenai Bluffs properties in accord with the September 27, 2000 Workplan and that all work will be performed consistent with CERCLA under EPA oversight." This statement is false. Neither Mr. Peronard nor anyone else at EPA has agreed to permit Grace to conduct a removal action on the KDC screening plant properties at the present time. In fact, Mr. Peronard told Mr. Stout that any work Grace conducts at the KDC properties must be conducted pursuant to a Consent Order, which is not currently in place. Mr. Peronard's statements to Mr. Stout were consistent with my October 26 letter to you, in which I stated that "neither Grace nor KDC may undertake any cleanup actions at the KDC screening plant properties if we do not work out a transition plan" that includes entry into a Consent Order. While we have been ready to discuss a transition plan along the lines proposed in my October 26 letter (including immediate access), Grace has not responded to this proposal.

November 13, 2000

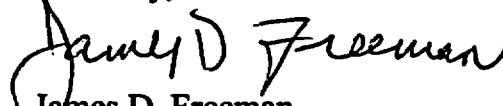
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As I noted in my October 26 letter, any removal action must be conducted pursuant to a Consent Order to ensure that 1) any comments EPA provides on Grace's work plan are actually incorporated into the work plan; 2) Grace performs work according to the schedule and parameters set forth in the work plan; 3) Grace does not exacerbate conditions at the site or expose anyone to asbestos-contaminated soils during the cleanup; and 4) EPA has the right to oversee Grace's cleanup activities and direct changes to the work plan where necessary to address unforeseen circumstances. Merely stating that Grace will perform work "consistent with CERCLA under EPA oversight" does not meet any of these criteria.

As a result, I once again request that you instruct Grace not to take any action at the KDC screening plant properties until we reach an agreement on the terms of a Consent Order that authorizes such work. As any actions that Grace begins at the site without EPA's express approval may interfere with the actions to be undertaken by EPA upon resolution of the access dispute that is currently before the Court, we will take appropriate steps either administratively or with the Court to stop such actions if they occur or appear likely.

I will be on travel tomorrow (November 14). In my absence, you may reach Matt Cohn at (303) 312-6853 if you have any questions about this matter.

Sincerely,


James D. Freeman
Trial Attorney

cc: Kathryn J. Coggon, Esq.
Matthew Cohn, Esq.